

110TH CONGRESS  
2D SESSION

# S. 3392

To amend the Homeland Security Act of 2002 to establish an appeal and redress process for passengers wrongly delayed or prohibited from boarding a flight, or denied a right, benefit, or privilege, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 31, 2008

Ms. KLOBUCHAR (for herself, Mr. THUNE, Mr. LEAHY, Mrs. MCCASKILL, and Mr. VOINOVICH) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To amend the Homeland Security Act of 2002 to establish an appeal and redress process for passengers wrongly delayed or prohibited from boarding a flight, or denied a right, benefit, or privilege, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair, Accurate, Secure,  
5 and Timely Redress Act of 2008” or the “FAST Redress  
6 Act of 2008”.

1 **SEC. 2. ESTABLISHMENT OF APPEAL AND REDRESS PROC-**  
 2 **ESS FOR PASSENGERS WRONGLY DELAYED**  
 3 **OR PROHIBITED FROM BOARDING A FLIGHT,**  
 4 **OR DENIED A RIGHT, BENEFIT, OR PRIVI-**  
 5 **LEGE.**

6 (a) IN GENERAL.—Subtitle H of title VIII of the  
 7 Homeland Security Act of 2002 (6 U.S.C. 451 et seq.)  
 8 is amended by adding at the end the following:

9 **“SEC. 890. APPEAL AND REDRESS PROCESS FOR PAS-**  
 10 **SENGERS WRONGLY DELAYED OR PROHIB-**  
 11 **ITED FROM BOARDING A FLIGHT, OR DENIED**  
 12 **A RIGHT, BENEFIT, OR PRIVILEGE.**

13 “(a) ESTABLISHMENT.—Not later than 30 days after  
 14 the date of the enactment of this section, the Secretary  
 15 shall establish a fair and timely process for individuals  
 16 who believe they were delayed or prohibited from boarding  
 17 a commercial aircraft or denied a right, benefit, or privi-  
 18 lege because they were wrongly identified as a threat when  
 19 screened against any terrorist watchlist or database used  
 20 by the Transportation Security Administration or any of-  
 21 fice or component of the Department.

22 “(b) OFFICE OF APPEALS AND REDRESS.—

23 “(1) ESTABLISHMENT.—

24 “(A) IN GENERAL.—The Secretary shall  
 25 establish in the Department an Office of Ap-  
 26 peals and Redress (referred to in this section as

1 the ‘Office’) to implement, coordinate, and exe-  
2 cute the process established by the Secretary  
3 pursuant to subsection (a).

4 “(B) REPRESENTATION.—The Office shall  
5 include representatives from the Transportation  
6 Security Administration and such other offices  
7 and components of the Department as the Sec-  
8 retary determines appropriate.

9 “(2) COMPREHENSIVE CLEARED LIST.—The  
10 process established by the Secretary pursuant to  
11 subsection (a) shall include the establishment of a  
12 method by which the Office, under the direction of  
13 the Secretary, shall maintain and appropriately dis-  
14 seminate a comprehensive list, to be known as the  
15 ‘Comprehensive Cleared List’, of individuals who—

16 “(A) were misidentified as an individual on  
17 any terrorist watchlist or database;

18 “(B) completed an appeal and redress re-  
19 quest approved by the Department and pro-  
20 vided such additional information as required  
21 by the Department to verify the individuals’  
22 identities; and

23 “(C) permit the use of their personally  
24 identifiable information to be shared between

1 multiple components of the Department for  
2 purposes of this section.

3 “(3) USE OF COMPREHENSIVE CLEARED  
4 LIST.—

5 “(A) IN GENERAL.—Except as provided in  
6 subparagraph (B), the Secretary shall—

7 “(i) transmit the Comprehensive  
8 Cleared List and any other information the  
9 Secretary determines necessary to resolve  
10 misidentifications and improve the admin-  
11 istration of the advanced passenger  
12 prescreening system and reduce the num-  
13 ber of false positives—

14 “(I) to the Transportation Secu-  
15 rity Administration or any other ap-  
16 propriate office or component of the  
17 Department;

18 “(II) other Federal, State, local,  
19 and tribal entities; and

20 “(III) domestic air carriers and  
21 foreign air carriers that use any ter-  
22 rorist watchlist or database; and

23 “(ii) ensure that the Comprehensive  
24 Cleared List is taken into account by all  
25 appropriate offices or components of the

1 Department when assessing the security  
2 risk of an individual.

3 “(B) TERMINATION.—

4 “(i) IN GENERAL.—The transmission  
5 of the Comprehensive Cleared List to do-  
6 mestic air carriers and foreign air carriers  
7 under subparagraph (A)(i)(III) shall termi-  
8 nate on the date on which the Federal  
9 Government assumes terrorist watchlist or  
10 database screening functions.

11 “(ii) WRITTEN NOTIFICATION TO CON-  
12 GRESS.—Not later than 15 days after the  
13 date described in clause (i), the Secretary  
14 shall submit written notification of such  
15 termination to—

16 “(I) the Committee on Com-  
17 merce, Science, and Transportation of  
18 the Senate;

19 “(II) the Committee on Home-  
20 land Security and Governmental Af-  
21 fairs of the Senate; and

22 “(III) the Committee on Home-  
23 land Security of the House of Rep-  
24 resentatives.

1           “(4) INTERGOVERNMENTAL EFFORTS.—The  
2       Secretary may—

3           “(A) enter into memoranda of under-  
4       standing with other Federal, State, local, and  
5       tribal agencies or entities, as necessary, to im-  
6       prove the appeal and redress process, to verify  
7       an individual’s identity and personally identifi-  
8       able information, and for other purposes; and

9           “(B) work with other Federal, State, local,  
10      and tribal agencies or entities that use any ter-  
11      rorist watchlist or database to ensure, to the  
12      greatest extent practicable, that the Com-  
13      prehensive Cleared List is considered when as-  
14      sessing the security risk of an individual.

15          “(5) HANDLING OF PERSONALLY IDENTIFIABLE  
16      INFORMATION.—The Secretary, in conjunction with  
17      the Chief Privacy Officer of the Department, shall—

18          “(A) require that employees of the Depart-  
19      ment handling personally identifiable informa-  
20      tion of individuals complete mandatory privacy  
21      and security training before being authorized to  
22      handle personally identifiable information of in-  
23      dividuals;

24          “(B) ensure that the information main-  
25      tained under this subsection is secured by

1 encryption, including one-way hashing, data  
2 anonymization techniques, or such other equiva-  
3 lent technical security protections to the extent  
4 the Secretary determines necessary;

5 “(C) limit the information collected from  
6 misidentified passengers or other individuals to  
7 the minimum amount necessary to resolve an  
8 appeal and redress request;

9 “(D) ensure that the information main-  
10 tained under this subsection is shared or trans-  
11 ferred via an encrypted data network that has  
12 been audited to ensure that the anti-hacking  
13 and other security related software functions  
14 perform properly and are updated as necessary;

15 “(E) ensure that any employee of the De-  
16 partment receiving the information maintained  
17 under this subsection handles such information  
18 in accordance with section 552a of title 5,  
19 United States Code, subchapter II of chapter  
20 35 of title 44, United States Code, section  
21 11331 of title 40, United States Code, and  
22 other applicable laws;

23 “(F) only retain the information main-  
24 tained under this subsection for as long as

1 needed to assist the individual traveler in the  
2 appeal and redress process;

3 “(G) engage in cooperative agreements  
4 with appropriate Federal agencies and entities,  
5 on a reimbursable basis, to ensure that legal  
6 name changes are properly reflected in any ter-  
7 rorist watchlist or database and the Com-  
8 prehensive Cleared List to improve the appeal  
9 and redress process and to ensure the most ac-  
10 curate lists of identifications possible (except  
11 that section 552a of title 5, United States  
12 Code, shall not prohibit the sharing of legal  
13 name changes among Federal agencies and en-  
14 tities for the purposes of this section); and

15 “(H) conduct and publish a privacy impact  
16 assessment of the appeal and redress process  
17 established under this section and submit the  
18 assessment to—

19 “(i) the Committee on Commerce,  
20 Science, and Transportation of the Senate;

21 “(ii) the Committee on Homeland Se-  
22 curity and Governmental Affairs of the  
23 Senate; and

24 “(iii) the Committee on Homeland Se-  
25 curity of the House of Representatives.



1           “(6) INITIATION OF APPEAL AND REDRESS  
2       PROCESS AT AIRPORTS.—

3           “(A) IN GENERAL.—The Office shall pro-  
4       vide written information to air carrier pas-  
5       sengers at each airport at which the Depart-  
6       ment has a presence on how to begin the appeal  
7       and redress process established pursuant to  
8       subsection (a).

9           “(B) AIRPORTS WITH SIGNIFICANT DE-  
10       PARTMENT PRESENCE.—The Office shall ensure  
11       that a Transportation Security Administration  
12       supervisor who is trained in such appeal and re-  
13       dress process is available at each airport at  
14       which the Department has a significant pres-  
15       ence to provide support to air carrier pas-  
16       sengers in need of guidance concerning such  
17       process.

18       “(c) TERRORIST WATCHLIST OR DATABASE DE-  
19       FINED.—In this section, the term ‘terrorist watchlist or  
20       database’ means any terrorist watchlist or database used  
21       by the Transportation Security Administration or any of-  
22       fice or component of the Department or specified in  
23       Homeland Security Presidential Directive 6, in effect as  
24       of the date of the enactment of this section.”.

1 (b) INCORPORATION OF SECURE FLIGHT.—Section  
 2 44903(j)(2) of title 49, United States Code, is amended—

3 (1) in subparagraph (C)(iii)—

4 (A) by redesignating subclauses (II)  
 5 through (VII) as subclauses (III) through  
 6 (VIII), respectively; and

7 (B) by inserting after subclause (I) the fol-  
 8 lowing:

9 “(II) ensure, not later than 30  
 10 days after the date of the enactment  
 11 of the FAST Redress Act of 2008,  
 12 that the procedure established under  
 13 subclause (I) is incorporated into the  
 14 appeals and redress process estab-  
 15 lished under section 890 of the Home-  
 16 land Security Act of 2002;”;

17 (2) in subparagraph (E)(iii), by inserting “, in  
 18 accordance with the appeals and redress process es-  
 19 tablished under section 890(a) of the Homeland Se-  
 20 curity Act of 2002” before the period at the end;  
 21 and

22 (3) in subparagraph (G)—

23 (A) in clause (i), by adding at the end the  
 24 following: “The Assistant Secretary shall incor-  
 25 porate the process established pursuant to this

1 clause into the appeals and redress process es-  
2 tablished under section 890(a) of the Homeland  
3 Security Act of 2002.”; and

4 (B) in clause (ii), by adding at the end the  
5 following: “The Assistant Secretary shall incor-  
6 porate the record established and maintained  
7 pursuant to this clause into the Comprehensive  
8 Cleared List established and maintained under  
9 section 890(b)(2) of the Homeland Security Act  
10 of 2002.”.

11 (c) REPORT TO CONGRESS.—

12 (1) IN GENERAL.—Not later than 240 days  
13 after the date of the enactment of this Act, the Sec-  
14 retary of Homeland Security shall submit to the  
15 Committee on Commerce, Science, and Transpor-  
16 tation of the Senate, the Committee on Homeland  
17 Security and Governmental Affairs of the Senate,  
18 and the Committee on Homeland Security of the  
19 House of Representatives a report on the status of  
20 information sharing among users at the Department  
21 of Homeland Security of any terrorist watchlist or  
22 database.

23 (2) CONTENTS.—The report required by para-  
24 graph (1) shall include the following information:

1 (A) A description of the processes and the  
2 status of the implementation of section 890 of  
3 the Homeland Security Act of 2002, as added  
4 by subsection (a), to share the Comprehensive  
5 Cleared List required by section 890(b)(2) of  
6 such Act with other offices and components of  
7 the Department of Homeland Security and  
8 other Federal, State, local, and tribal authori-  
9 ties that utilize any terrorist watchlist or data-  
10 base.

11 (B) A description of the extent to which  
12 such other offices and components of the De-  
13 partment of Homeland Security are taking into  
14 account the Comprehensive Cleared List.

15 (C) Data on the number of individuals who  
16 have sought and successfully obtained redress  
17 through the Office of Appeals and Redress es-  
18 tablished under section 890(b)(1) of the Home-  
19 land Security Act of 2002, as added by sub-  
20 section (a).

21 (D) Data on the number of individuals  
22 who have sought and were denied redress  
23 through the Office of Appeals and Redress.

24 (E) An assessment of what impact infor-  
25 mation sharing of the Comprehensive Cleared

1 List has had on misidentifications of individuals  
 2 who have successfully obtained redress through  
 3 the Office of Appeals and Redress.

4 (F) An updated privacy impact assess-  
 5 ment.

6 (3) TERRORIST WATCHLIST OR DATABASE DE-  
 7 FINED.—In this subsection, the term “terrorist  
 8 watchlist or database” has the meaning given the  
 9 term in section 890(c) of the Homeland Security Act  
 10 of 2002, as added by subsection (a) of this section.

11 (d) CONFORMING AMENDMENT.—Title 49, United  
 12 States Code, is amended by striking section 44926 (and  
 13 the item relating to such section in the analysis for chap-  
 14 ter 449 of title 49).

15 (e) CLERICAL AMENDMENT.—Section 1(b) of the  
 16 Homeland Security Act of 2002 (6 U.S.C. 101(b)) is  
 17 amended by striking the item relating to section 890 and  
 18 inserting the following:

“Sec. 890. Appeal and redress process for passengers wrongly delayed or pro-  
 hibited from boarding a flight, or denied a right, benefit, or  
 privilege.”.

